

in that area where I live. I do not know your house so I cannot say if it is 2 miles away from mine or not." Further, he said: "I have not made any mistake. You were the person who came and demanded money. Although your face was partly covered I could still recognise you and besides that I recognised your voice also."

His wife Silvamarie said, referring to the accused: "I had seen the Bengali near my house before the robbery. I had seen him several times and on one occasion I spoke to him."

The accused in his defence denied the allegations that he was concerned in any extortion.

The whole case really turns on the identification of the accused and as to whether such identification by the witnesses can be relied upon. The prosecution produced no evidence at all to show that either of the witnesses gave a description of the accused at the time of the offence, but they called the O.C.P.D., Batu Gajah, A.S.P. Sarmukh Singh, who said that "the accused was under arrest" in Batu Gajah gaol, and that he fetched the 2 witnesses from Teluk Anson on the 29th of March, 1948—nearly 2 years after the offence—and then without having an identification parade which, after such a lapse of time one would expect would have been held, he produced the accused to the witnesses in the gaol, and they, after he was produced said they identified him as the man who, 2 years before, had been concerned in the incident of extortion. I asked him why there had not been an identification parade and he informed me that it was not the practice in case of a man who was known for five years by witnesses to hold identification parades. He also stated that "they told me he was a person living at Ayer Papan, which was 2 miles from Changkat Tin." This, however, could not have been the case as Arokiam in his evidence said that he did not know where his house was, and that he could not say if it was 2 miles away from his or not. I therefore consider that the identification at Batu Gajah gaol amounts to no identification at all, and that the usual and proper way in such cases would have been to hold a proper identification parade. Apart from this identification at Batu Gajah gaol there is really no evidence of identification of the accused as there is no evidence that a report was made of this offence or that any description of the accused was given at that time. The accused denied his presence at the time of the offence and I consider that, on the whole of the case, there is a reasonable doubt as to his participating in the offence. He is therefore acquitted.

Accused acquitted.

CHEONG SEE LEONG v. PUBLIC PROSECUTOR.

[C. A. (Willan C.J., Spenser Wilkinson and Russell JJ.)
September 29, 1948]

[K. L. — F.M. Criminal Appeal No. 100 of 1948]

Criminal Law — Statement to a Police Officer — Statement made to Police Inspector through interpretation of Detective Sergeant — Likelihood of bias — Emergency Regulations, 1948, regs. 6(1) and 33.

In this case the appellant was convicted of an offence under reg. 6(1) of the Emergency Regulations 1948, that he, knowing that one Chan So had under his control an unlicensed firearm failed to report this to the Police at the earliest possible opportunity. At the trial evidence was given of a statement of the appellant alleged to have been made to the Inspector through the interpretation of a Detective Sergeant, who was a member of the Police party which raided the hut where Chan So and the appellant were found. Reg. 33 of the Emergency Regulations, 1948, provided that "Where any person is charged with any offence against these Regulations — any statement, whether such statement amounts to a confession or not — and whether in the course of a Police investigation or not, by such persons to or in the hearing of any Police officer of or above the rank of Inspector shall — be admissible at his trial in evidence . . ." On appeal, it was argued that the statement of the accused should not have been admitted in evidence.

Held: (1) although the statement was made through an interpreter, it was a statement made by the appellant to a Police Inspector and so came within the provisions of reg. 33 of the Emergency Regulations; (2) the principle that a judicial officer who is interested in a case should not sit to adjudicate upon it, applies in regard to interpreters; (3) the use of the detective Sergeant, who was fully conversant with the material facts and was subsequently called by the prosecution as their principal witness to prove those facts, as an interpreter in taking the statement from the appellant, offended against the elementary ideas of justice and therefore no reliance could be placed on the accuracy of the statement.

Case referred to:—

- (1) *Ah Soi v. King-Emperor* A.I.R. 1926 Calcutta 922.

CRIMINAL APPEAL.

T. K. Sen for the appellant.

B. G. Shields (D. P. P.) for the respondent.

The judgment of the Court of Appeal was delivered by:—

Spenser Wilkinson J.:—The appellant was charged under Regulation 6(1) of the Emergency Regulations, 1948, that he, knowing that one Chan So had under his control an unlicensed fire-arm, failed to report this to the Police at the earliest possible opportunity. He was convicted on this charge and sentenced to 5 years rigorous imprisonment.

The main evidence against the appellant was that of Detective Sergeant No. 180 who deposed that upon approaching a certain hut with a Police party at 9.00 a.m. on the 16th July, 1948, he saw in the doorway of the hut Chan So, the man referred to in the charge, and also saw the appellant about four yards from the

hut walking towards it. The Police surrounded the hut, the appellant tried to run away but was caught. Upon a search of the hut being made a loaded pistol was found therein.

Chan So, who was alleged to have been in possession of the pistol, also gave evidence at the trial in the course of which he somewhat reluctantly stated that he had a pistol and that the appellant saw it because it was lying in the hut uncovered. The only other evidence against the appellant consisted of a statement alleged to have been made by him to the O.C.P.D., Inspector Hussain, through the interpretation of the Detective Sergeant above referred to. In making the statement the appellant spoke in Hakka and the sergeant interpreted into Malay to the O.C.P.D. who wrote the statement down in English.

One of the grounds of appeal was that this statement of the appellant should not, in the circumstances of the case, have been admitted in evidence. The argument put forward by counsel for the appellant in regard to this ground of appeal was based almost entirely upon the remarks of the learned trial Judge in his oral judgment. The relevant passage from that judgment is as follows :—

I conclude from this that Chan So and the detective sergeant together are not sufficient to prove knowledge in the accused that Chan So had the pistol, and the case on this point depends entirely on the accused's own statement. If that is true and admissible, it is conclusive proof of that knowledge. Ss. 25 and 26 of the Evidence Enactment would, in the ordinary way have caused this statement to be excluded. Regulation 33 of the Emergency Regulations overrules those provisions of law and makes it admissible, if it is a statement made to a police officer of the rank of Inspector or above. The question is whether this statement was made to Inspector Hussain or to the detective sergeant. Regulation 33 is an extension of the criminal law against accused persons. It must be construed, so far as reasonably possible, in their favour and its operation must be watched jealously. The Inspector could not understand Hakka, in which language the accused spoke. The detective sergeant was in charge of this case and was the principal witness for the prosecution. He might be open to a temptation to improve and embellish the case, by inventing words which the accused had not said and causing the Inspector to insert such words in the statement. If he wished to do this, it would be quite impossible to discover it, and it is fair to say that such a situation is exactly within the mischief of ss. 25 and 26. The sergeant was in a different position from an ordinary independent interpreter who is un-interested in the subject matter, and may be taken as a mere conduit-pipe, incapable of invention to the detriment of the accused. On the other hand, the accused's intention was no doubt to communicate to the Inspector what he said through the interpreter. The point is a novel one to me and, as the accused was not represented by counsel, I am not satisfied that all has been said on his behalf which might be said. I shall therefore take steps to reserve this point for the decision of the Court of Appeal, unless an appeal is lodged, so ensuring that that Court will in any event deal with it. I hold that the statement is admissible in law, and I find that it accurately represents what the accused said. I have no reason other than a purely theoretical one for doubting the good faith of the detective sergeant.

If the statement is admissible at all it would be admissible under the provision of Regulation 33 of the

Emergency Regulations, 1948, the relevant parts of which are as follows :—

Where any person is charged with any offence against these Regulations any statement, whether such statement amounts to a confession or not and whether in the course of a Police investigation or not, by such person to or in the hearing of any Police Officer of or above the rank of Inspector shall be admissible at his trial in evidence

The Deputy Public Prosecutor, whilst admitting that it was undesirable for the Police Officer (Detective Sergeant No. 180), who was in charge of the investigations and also one of the principal witnesses in the case, to act as interpreter when the accused made his statement, argued that it was not an illegality, that it did not make the statement inadmissible, but merely went to its weight. He further contended that there is no statutory provision against the use of such a person as interpreter and that as all the provisions of Regulation 33 had, in this case, been complied with, the statement must be admissible.

With regard to this last argument we think it sufficient to point out that there may be irregularities in the course of criminal proceedings which are not infringements of any specific statutory provision.

In order for a statement by an accused to be admissible it must have been made "to or in the hearing of" any Police Officer of or above the rank of Inspector. Dealing first with the expression "in the hearing of" to which reference was made in the course of the argument we are of opinion that these words are inapplicable to the appeal before us. The "hearing" in this context must, in our view, either include also understanding or be such that the actual words used are recorded or memorised in the original language by the Inspector who heard them and who would then be able to give evidence himself as to exactly what he heard.

The next question which is the first one raised by the learned trial Judge in the extract quoted above is whether the statement of the appellant was made "to the Inspector" within the meaning of the Regulation. The only practicable way in which one person can make a statement to another in a language that the latter does not understand is either by signs or through interpretation. In the ordinary way an independent interpreter is, as the learned trial Judge pointed out, uninterested in the subject matter and may be taken as being a mere "conduit-pipe" incapable of invention to the detriment of the accused. A statement thus made through a mere "conduit-pipe" by an accused to a Police Inspector is, in our view a statement properly made by him to the Inspector.

If, however, the interpreter used, instead of being a mere "conduit-pipe" has an interest in the subject matter then we are brought to the consideration of the

second point raised by the learned trial Judge in the extract above quoted that he might be open to a temptation to improve or embellish the case. We must, therefore, consider the effect of such a possibility upon the proceedings.

There are numerous decided cases which have laid down the principle that judicial officers are required to be free from bias when adjudicating on any particular case before them. Those cases have decided that when a judicial officer is interested in the subject matter of any case before him the presumption is that he cannot be free from bias. It may be, in such a case, that his adjudication has been free from all bias. That is not the test. The test is whether there is a likelihood of bias arising from his interest in the subject matter. If there is that likelihood then his adjudication cannot stand. In other words, the test is whether a judicial officer is so interested in the case that he should not have sat to adjudicate upon it. We think that the same principles must be applied in regard to interpreters in a case such as this.

The only authority which was cited to us on the question of interpretation was the case of *Ah Soi v. King Emperor*⁽¹⁾. In that case a witness who had personally interested himself in the Police investigations and himself gave evidence before the committing Magistrate and again in the Sessions Court was used as interpreter for the other witnesses in the latter Court. In the judgment in that case the following remark was made :—

The procedure adopted by the learned Sessions Judge has had the effect of placing the accused more or less at the mercy of the interpreter

It was held that the procedure adopted was opposed to elementary ideas of justice.

In the case before us the statement of the appellant was interpreted by Detective Sergeant No. 180 who, as appears from the record, was fully conversant with all the material facts and was subsequently called by the prosecution as their principal witness to prove those facts. Accordingly there is no doubt that he had a real interest in the subject matter of that statement. Hence applying the above-mentioned test there was the likelihood of bias when he interpreted.

We have no doubt this offends against the elementary ideas of justice and therefore no reliance can be placed on the accuracy of that statement. Without it as found by the learned trial Judge there is not sufficient evidence to support the conviction.

In view of this decision it is unnecessary for us to consider the other grounds of appeal which were argued before us. The conviction and sentence are therefore quashed.

Conviction quashed.

R^e P. F. X. LEONARD.

[O. C. J. (Willan C.J.) September 30, 1948]

[Ipoh — Petition for Admission No. 4 of 1947]

Advocates and Solicitors Ordinance, 1947, s. 5(3)
— *Whether time spent by Petitioner as a Pupil of a Senior Counsel of Irish Bar is a period of pupillage within the meaning of s. 5(3)(a)(i) of the Ordinance.*

In this application the question raised was whether the time spent by the Petitioner as a pupil of a Senior Counsel of the Irish Bar is a period of pupillage as required by s. 5(3)(a)(i) of the Advocates and Solicitors Ordinance.

Held: the words "practising barrister" in s. 5(3)(a)(i) of the Advocates and Solicitors Ordinance, 1947, applies only to a barrister of England or Northern Ireland and therefore the time spent by the Petitioner as a pupil of a Senior Counsel of the Irish Bar is not a period of pupillage as required by s. 5(3)(a)(i) of the Ordinance.

Case referred to :—

(1) *In Re K. T. K. Tangamani* (1948) M.L.J. 101.

PETITION FOR ADMISSION.

J. H. B. Will for the Petitioner.

W. G. W. Hastings for the Bar Council of the Federation.

M. S. Mahendran for the Perak Bar Committee.

M. G. Neal for the Attorney-General.

Willan C.J. : — The petitioner was called to the Bar of Ireland on the 25th of October, 1941, and practised at the Irish Bar for a period of six years.

From the 10th of January, 1942, until the 31st July, 1942 — i.e. for a period of nearly seven months — the petitioner was a pupil of a Senior Counsel of the Irish Bar.

From the 28th of January, 1948, to the 10th of August, 1948, the petitioner has attended and received instruction in law in the office of a practising practitioner of more than seven year's standing at the Bar of the Federation of Malaya (formerly the Bar of the Malayan Union and prior to that the Bar of the Federated Malay States), and he now (in September, 1948) applies to be admitted to the Bar of the Federation.

The only question raised before me, and which I have to decide, is whether the time spent by the petitioner as a pupil of a Senior Counsel of the Irish

Bar is a period of pupillage as required by section 5(3)(a)(i) of the Advocates and Solicitors Ordinance, 1947. That section reads:—

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(3) Before any order shall be made by the Court on his petition every petitioner shall have attended and received instruction in law in the office in the Malayan Union (now the Federation) of a practising practitioner of not less than seven years' standing at the Bar of the Federated Malay States, or one of the Straits Settlements, or of the State of Johore, or of the Malayan Union or any two or more of such Bars, for the period hereinafter mentioned, namely:

(a) if the petitioner is a barrister of England or Northern Ireland (or of Ireland called before the first day of October, 1921) or a member of the Faculty of Advocates in Scotland and has previously been a pupil of or read in the Chambers of a practising barrister or member of the Faculty of Advocates of more than seven years' standing and has

(i) been a pupil or read in Chambers as aforesaid for six months or longer — a period of not less than six months;

If the time spent by the petitioner as a pupil of Senior Counsel of the Irish Bar is a period of pupillage within the meaning of section 5(3)(a)(i) his petition for admission is not premature, because he has attended and received instruction in law for a period of not less than six months in the office of a practising practitioner of not less than seven years' standing at the Bar of the Federation.

Mr. Will, for the petitioner, relied on the case of *In Re K. T. K. Tangamani*⁽¹⁾ as an authority for the proposition that the time spent by the petitioner as a pupil of a Senior Counsel of the Irish Bar is a period of pupillage within the meaning of section 5(3)(a)(i) of our local Ordinance.

That case was decided by McElwaine C.J., under the Advocates and Solicitors Ordinance (Cap 62) of the Straits Settlements. In construing the meaning of the words "been a pupil of or read in the Chambers of a practising barrister", which appear in section 5(3) of that Straits Settlements Ordinance, as they do in section 5(3)(a) of our local Ordinance, the learned Chief Justice said by way of obiter—it was not necessary to the decision in that case:—

The word 'pupil' was not inserted in the section to lend support to Mr. Cobbett's interpretation of the clause. That word was introduced to provide for the case of Irish

Barristers as it was most unusual, and I think is still unusual, for Irish Barristers to have chambers. The Law Library took, and still takes, the place of chambers in Ireland.

Mr. Hastings for the Bar Council of the Federation, opposed the petition solely on the construction of section 5(3)(a)(i) of our local Ordinance. His argument was that the word 'barrister' where it appears secondly in paragraph (a) thereof, refers back to, and therefore has the same meaning as, the expression 'barrister of England or Northern Ireland' which appears at the beginning of the paragraph.

Mr. Hastings submitted that this is clearly so because where the petitioner is a member of the Faculty of Advocates in Scotland, the words 'Faculty of Advocates', where they occur secondly in that paragraph, can have no other meaning than the expression 'Faculty of Advocates in Scotland' set out earlier in that paragraph.

Mr. Mahendran, for the Perak Bar Committee, did not oppose the petition.

Mr. Neal, for the Attorney-General, associated himself with the arguments of Mr. Hastings.

I have no doubt that the view put forward by Mr. Hastings is correct. There must be some limitation on the word 'barrister' where it appears secondly in paragraph (a) of that section, and the only possible limitation is by construing the section in the way put forward by Mr. Hastings.

No evidence was placed before me as to the practice in Northern Ireland when a barrister, or a person admitted as a law student who is not yet called to the Bar, wishes to read with a practising barrister in Northern Ireland, and it may be that there the word 'pupil' is apposite. In England the words 'been a pupil of' and the words 'read in Chambers of' a practising barrister, mean one and the same thing.

I am not prepared to follow the *obiter dictum* of McElwaine C.J. in the *Tangamani* case *supra* as the right construction of section 5(3)(a) of our local law.

In the result this petition is premature and accordingly there will be no order.

No order.